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EXAMINER

FISCHER, ANDREW J

ART UNIT PAPER NUMBER

3627

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

**Office Action Summary**

Application No.

09/579,918

Applicant(s)

LEUNG, PHILIP C M

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 12-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.                      6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Acknowledgments*

1. The amendment filed August 25, 2003 (Paper No. 7) is acknowledged. Accordingly, claims 1-10 and 12-22 remain pending

### *Election/Restriction*

2. Applicant's election of Group I (Claims 1-10 and 12-22) in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP §818.03(a)).

### *Election*

3. Regarding the Election of Species, the Examiner notes that Applicant has not made an election of Species as noted in the previous Office Action, (Paper No. 7, Paragraphs Nos. 8-14). Technically, Applicant's response is nonresponsive. MPEP §813.03(b) and §813.03(d). However, in order to advance prosecution of this application and after further review of Applicant's disclosure and the prior art, it is the Examiner's position that the claimed species in Species Group A and Species Group B are not patentably distinct. Should Applicant argue and present evidence traversing the Examiner's position and argue that the Groups of Species *are* patentably distinct, the election of species requirements will be reinstated.

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***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. It is unclear if Applicant intends the "terminal" in "terminal interface" as recited in claim 5 to be the terminal in claim 1 or a different (*i.e.* computer) terminal. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

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7. Claims 1, 4-9, and 12-22, as understood by the Examiner, are rejected under 35 U.S.C. 102(e) as being anticipated by Keillor et. al. (U.S. 5,917,433) ("Keillor"). Keillor discloses a computer system having a trailer tracking program (which tracks assets) which receives information (status) regarding the trailer and stores the information in a record (inherent); a plurality of terminals (inherent in any trucking operation); a terminal interface (the interface to 22); a terminal management system (the operating system of each terminal); an access restriction system (inherent in virtually all wireless networks).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keillor in view of Nijenhuis (PCT/NL98/00128). Keillor discloses as discussed above but does not directly disclose a loading pad. Nijenhuis teaches a terminal (1) with a loading pad (Figure 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Keillor as taught by Nijenhuis to include a terminal with a loading pad. Such a

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modification would have provided a system where the transfer time of trailers to rails was reduced.

10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keillor. Keillor discloses as discussed above but does not directly disclose a reservation system. The Examiner takes Official Notice that reservation systems for tractor-trailers are old and well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Keillor to include reservation systems. Such a modification would have provided greater efficiency to a container/trailer transportation system since a user could have reserved a trailer for a particular period of time.

11. Claim 10 is also rejected under 35 U.S.C. 103(a) as being unpatentable over Keillor. Keillor discloses as discussed above but does not directly disclose a gate and gate controller. The Examiner takes Official Notice that gates and gate controllers are old and well known in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Keillor to include gates and gate controllers at trailer destinations. Such a modification would have provided additional security by restricting access the terminal only to authorized persons.

12. Moreover, based upon Keillor, the Examiner finds that containers and trailers are art recognized equivalents. See MPEP §2144.06.

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13. Functional recitation(s) using the word “for” (e.g. “for reserving a slot on a train” as recited in claim 3) have been considered but are given little patentable weight<sup>1</sup> because they fail to add any structural limitations and are thereby regarded as intended use language. A recitation of the intended use of the claimed product must result in a structural difference between the claimed product and the prior art in order to patentably distinguish the claimed product from the prior art. If the prior art structure is capable of performing the intended use, then it reads on the claimed limitation. *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) (“The manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself.”); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). See also MPEP §§ 2114 and 2115. Unless expressly noted otherwise by the Examiner, the claim interpretation principles in this paragraph apply to all examined claims currently pending.

14. After careful review of the specification and prosecution history, the Examiner is unaware of any desire—either expressly or implicitly—by Applicant to be his own lexicographer and to define a claim term to have a meaning other than its ordinary and accustomed meaning. Therefore, the Examiner starts with the heavy presumption that all claim limitations are given their ordinary and accustomed meaning. See *Bell Atlantic Network Services Inc. v. Covad Communications Group Inc.*, 262 F.3d 1258, 1268, 59 USPQ2d 1865, 1870 (Fed. Cir. 2001) (“[T]here is a heavy presumption in favor of the ordinary meaning of claim language as understood by one of ordinary

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<sup>1</sup> See e.g. *In re Gulack*, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983)(stating that although all limitations must be considered, not all limitations are entitled to patentable weight.).

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skill in the art.”); *CCS Fitness Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366, 62 USPQ2d 1658, 1662 (Fed. Cir. 2002) (There is a “heavy presumption that a claim term carries its ordinary and customary meaning.”). See also MPEP §2111.01 and *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).<sup>2</sup>

In accordance with the ordinary and accustom meaning presumption, during examination the claims are interpreted with their “broadest reasonable interpretation . . . .” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).<sup>3</sup>

However, if Applicant disagrees with the Examiner and has either (a) already used lexicography or (b) wishes to use lexicography and therefore (under either (a) or (b)) desires a claim limitation to have a meaning other than its ordinary and accustom meaning, the Examiner respectfully requests Applicant in his next response to expressly indicate<sup>4</sup> the claim limitation at issue and to show where in the specification or prosecution history the limitation is defined. Such

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<sup>2</sup> It is the Examiner’s position that “plain meaning” and “ordinary and accustom meaning” are synonymous. See e.g. *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001) (“[A]ll terms in a patent claim are to be given their plain, ordinary and accustomed meaning . . .”).

<sup>3</sup> See also MPEP §2111.

<sup>4</sup> “Absent an *express intent* to impart a novel meaning, terms in a claim are to be given their ordinary and accustomed meaning. [Emphasis added.]” *Wenger Manufacturing Inc. v. Coating Mach. Sys., Inc.*, 239 F.3d 1225, 1232, 57 USPQ2d 1679, 1684 (Fed. Cir. 2001) (citations and quotations omitted). “In the absence of an *express intent* to impart a novel meaning to claim terms, an inventor’s claim terms take on their ordinary meaning. We indulge a heavy presumption that a claim term carries its ordinary and customary meaning. [Emphasis added.]” *Teleflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1380 (Fed. Cir. 2002) (citations and quotations omitted).



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definitions must be clearly stated in the specification or file history. *Bell Atlantic*, 262 F.3d at 1268, 59 USPQ2d at 1870, (“[I]n redefining the meaning of particular claim terms away from the ordinary meaning, the intrinsic evidence must ‘clearly set forth’ or ‘clearly redefine’ a claim term so as to put one reasonably skilled in the art on notice that the patentee intended to so redefine the claim term”).<sup>5</sup> The Examiner cautions that no new matter is allowed.

Failure by Applicant in his next response to address this issue in accordance with 37 C.F.R. §1.111(b) or to be non-responsive to this issue entirely will be considered a desire by Applicant to forgo lexicography in this application and to continue having the claims interpreted with their broadest reasonable interpretation. Additionally, it is the Examiner’s position that above requirements are reasonable.<sup>6</sup> Unless expressly noted otherwise by the Examiner, the

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<sup>5</sup> See also *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1576 (Fed. Cir. 1996), (“[A] patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, *as long as* the special definition of the term is *clearly stated* in the patent specification or file history. [Emphasis added.]”); *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998) (“Such special meaning, however, must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.”). See also MPEP §2111.01, subsection titled “Applicant May Be Own Lexicographer” and MPEP §2173.05(a) titled “New Terminology.”

<sup>6</sup> The requirements are reasonable on at least two separate and independent grounds. First, the Examiner’s requirements are simply an express request for clarification of how Applicant intends his claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicant is not inadvertently overlooked by the Examiner. Second, the requirements are reasonable in view of the USPTO’s goals of compact prosecution, productivity with particular emphasis on reductions in both pendency and cycle time, and other goals as outlined in the USPTO’s The 21<sup>st</sup> Century Strategic Plan, February 3, 2003 available at [www.uspto.gov/web/offices/com/strat21/index.htm](http://www.uspto.gov/web/offices/com/strat21/index.htm) (last accessed September 7, 2003).

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preceding discussion on claim interpretation principles applies to all examined claims currently pending.

15. To the extent that the Examiner's interpretations are in dispute with Applicant's interpretations, the Examiner hereby adopts the following definitions—under the broadest reasonable interpretation standard—in all his claim interpretations.<sup>7</sup> Moreover, the following list is provided in accordance with *In re Morris* and is not exhaustive in any way.

a. **Computer:** "Any machine that does three things: accepts structured input, processes it according to prescribed rules, and produces the results as output." Computer Dictionary, 3rd Edition, Microsoft Press, Redmond, WA, 1997.<sup>8</sup>

b. **Data** "Plural of the Latin *datum*, meaning an item of information. In practice, data is often used for the singular as well as plural the form of the noun." *Id.*

c. **Interface:** "1. The point at which a connection is made between two elements so that they can work with each other." *Id.*

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<sup>7</sup> Some additional definitions are provided to help interpret words found in the definition of claim terms.

<sup>8</sup> Based upon the Applicant's disclosure, the art now of record, and the knowledge of one of ordinary skill in this art, the Examiner's finds that the *Microsoft Press Computer Dictionary* is an appropriate technical dictionary known to be used by one of ordinary skill in this art. See e.g. *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1373, 65 USPQ2d 1865, 1872 (Fed. Cir. 2003) where the Federal Circuit used *Microsoft Press Computer Dictionary* (3d ed.) as "a technical dictionary" used to define the term "flag." See also *In re Barr*, 444 F.2d 588, 170 USPQ 330 (CCPA 1971)(noting that its appropriate to use technical dictionaries in order to ascertain the meaning of a term of art) and MPEP §2173.05(a) titled "New Terminology".

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d. **Network**: "A group of computers and associated network devices that are connected by communications facilities." *Id.*

e. **Record**: "A data structure that is a collection of fields (elements), each with its own name and type. Unlike an array, whose elements all represent the same type of information and are accessed using an index, the elements of a record represent different types of information and are accessed by name. A record can be accessed as a collective unit of elements, or the elements can be accessed individually." *Id.*

f. **Server**: "2. On the Internet or other network, a computer or program that responds to commands from a client." *Id.* **Client**: "3. On a local area network or Internet, a computer that accesses shared network resources provided by another computer (called a server)." *Id.*

g. **System**: "Any collection of component elements that work together to perform a task." *Id.*

h. **Portable Computer**: "Any computer designed to move easily." *Id.*

i. **Information**: "2 a . . . (3): FACTS, DATA . . ." Merriam-Webster's Collegiate Dictionary, 10<sup>th</sup> Edition, Merriam-Webster Inc., Springfield, M.A., 1997.

### **Conclusion**

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure includes the following: Salvo et. al. (U.S. 6,341,271 B1); Mummert et. al. (U.S.

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6,427,152 B1); Lesesky et. al. (U.S. 6,111,524); Strong (U.S. 6,006,148); Benson et. al. (U.S. 5,635,693).

17. The following two (2) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action: MPEP citations to Chapters 200, 700, 1800, and 2100 are from the MPEP 8<sup>th</sup> Edition, Rev 1, February 2003. All remaining MPEP citations are from MPEP 8<sup>th</sup> Edition, August 2001.

18. In accordance with *In re Lee*, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the references How Computers Work Millennium Ed. by Ron White; How Networks Work, Millennium Ed. by Frank J. Derfler et. al.; and How the Internet Works, Millennium Ed. by Preston Gralla are additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. Each reference is cited in its entirety. Moreover, because these three references are directed towards beginners (see e.g. "User Level: Beginning . . ."), because of the references' basic content (which is self-evident upon review of the references), and after further review of both the intrinsic evidence of record and the entire art now of record, the Examiner finds that these three references are primarily directed towards those of *low* skill in this art. Because these three references are directed towards those of low skill in this art, the Examiner finds that one of *ordinary* skill in this art must—at the very least—be aware of the knowledge and information contained within these three references.

19. Suggestions or examples of claim language provided by the Examiner in this Office Action are just that—suggestions or examples—and do not constitute a formal requirement mandated by

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the Examiner. Unless stated otherwise by an express indication that the claim is "allowed," exemplary claim language provided by the Examiner to overcome a particular rejection or to change claim interpretation has *not been addressed* with respect to other aspects of patentability (e.g. §101 patentable subject matter, §112 1<sup>st</sup> paragraph written description and enablement, §112 2<sup>nd</sup> paragraph indefiniteness, and §102 and §103 prior art). Therefore, any claim amendment that incorporates an Examiner suggestion or example or simply changes claim interpretation will still require further consideration and/or search and a patentability determination as noted above.

20. All factual findings and conclusions of law in this Office Action are based the entire record. Although the Examiner may have singled out various items of evidence (e.g. Keillor) and expressly noted its content, the other documents now of record were also considered and applied when making the Examiner's factual findings and conclusions of law (see e.g. the Keillor rejections above). Moreover, because many of the cannons of claim construction are generally viewed from a person of ordinary skill in the art,<sup>9</sup> the other documents of record not specifically mentioned in the prior art rejection(s) above were nevertheless used in the Examiner's deliberative process to access, inter alia, the definiteness of the claims, the level of skill in the art, and ultimately the patentability of the claimed invention.

21. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim

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<sup>9</sup> See e.g. *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986)(noting that the definiteness inquiry focuses on whether those skilled in the art would understand the scope of the claim).

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interpretation and any rejections or objections in this application. Furthermore, the Examiner has provided Applicant(s) with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. If Applicant disagrees with *any* factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,<sup>10</sup> the Examiner respectfully reminds Applicant to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) *in his next response*. By addressing these issues now, matters where the Examiner and Applicant agree can be eliminated allowing the Examiner and Applicant to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicant has any questions regarding the Examiner's positions or has other questions regarding this communication or even previous communications, Applicant is strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (703) 305-0292. To respond to this Office Action by facsimile, fax to (703) 872-9306.



Andrew J. Fischer  
Patent Examiner

AJF  
September 7, 2003

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<sup>10</sup> E.g., if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.